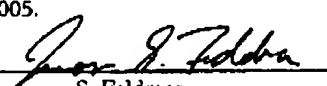



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PTO/SB/33 (07-05)

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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) G&C 30695.21-US-U1	
<b>CERTIFICATE OF MAILING OR TRANSMISSION</b> <b>UNDER 37 CFR 1.8</b>  I hereby certify that this correspondence is being filed via facsimile transmission to the U.S. Patent and Trademark Office on July 15, 2005.  By: <u></u> Name: Jason S. Feldmar	Application Number 09/849,322		Filed May 4, 2001
	First Named Inventor Paul F. Klein		
	Art Unit 2141	Examiner Djenane M. Bayard	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.   This request is being filed with a notice of appeal.   The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input type="checkbox"/> attorney or agent of record. Registration number _____ <input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>39,187</u>			
		<u></u> Signature <u>Jason S. Feldmar</u> Typed or printed name <u>(310) 641-8797</u> Telephone number <u>July 15, 2005</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Due Date: July 16, 2005

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Paul F. Klein	Examiner:	Djenane M. Bayard
Serial No.:	09/849,322	Group Art Unit:	2141
Filed:	May 4, 2001	Docket:	G&C 30695.21-US-U1
Title:	REDUCING INFORMATION TRANSMISSION TIME BY ADAPTING INFORMATION DELIVERY TO THE SPEED OF A GIVEN NETWORK CONNECTION		

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PRE-APPEAL BRIEF REQUEST FOR REVIEW ARGUMENTS

MAIL STOP AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action dated March 16, 2005, and the Advisory Action dated June 16, 2005, Applicants hereby submit a Notice of Appeal accompanied by a Pre-Appeal Brief Request for Review. The claims have not been amended.

Applicant traverses the rejections for one or more of the following reasons:

- (1) Borella fails to teach, disclose or suggest a calibrated object library on a server;
- (2) Borella fails to teach, disclose or suggest a client transmitting a request to a server for an object of a pre-known size and properties;
- (3) Borella fails to teach, disclose or suggest a client obtaining the object of pre-known size and properties across a network; and
- (4) Borella fails to teach, disclose or suggest a round-trip response time as the time from a client request to a server through the obtaining of the object from the server.

Independent claims 1, 14, and 27 are generally directed to obtaining information across a network based on a speed of the network connection (wherein the size of the information decreases as the speed of the network decreases). To accommodate the different sizes of information to be obtained, the claims provide the ability to determine the speed of the network connection in a specific manner. In this regard, a calibrated object library on a server is used. The client transmits a

request, across the network connection, to the calibrated object library on the server, for an object of a pre-known size and properties. Once requested, the requested object is obtained/transmitted back to the client across the network connection. The speed of the network is then based on a measurement of the round-trip response time calculated from the transmitting of the request for the object (i.e., from the client) to completion of obtaining the object from across the network connection (from the server).

Appellants submit that based on the claims and cited art, there are clear errors in the examiner's rejections and further, the rejections fail to establish essential elements needed for a prima facie rejection.

Failure to Establish Prima Facie Case under 35 U.S.C. §102(e)

Appellants directs the panel to page 11 of the Request for Reconsideration filed by Appellant on May 16, 2005 for the substance of the arguments. Based on such arguments, Appellants submit that there is clear error in the examiner's rejection.

Calibrated Object Library on a Server

Appellant directs the Panel to pages 11-12 of the Request for Reconsideration filed by Appellant on May 16, 2005 for the substance of the arguments.

In response to the arguments, the Advisory Action merely states:

However, Borella clearly teaches wherein an amount of electronic content to dynamically sent to a user that is using the first network device latency. Furthermore, Borella teaches wherein network connection with with a faster response time, users expect the requested content to be of a higher quality and contain a larger variety of content. On a network with a slower response time, users will accept a the content to a of a lower quality (See col. 4).

Appellant respectfully traverses the above assertions. Again, the Office Action and the above Advisory Action comments fail to establish a prima facie case for a calibrated object library on a server. In this regard, the claim limitation relating to a calibrated object library on a server is not met or disclosed by Borella.

*Client Based Transmission of Requests, Receipt of Requested Information, and Calculation of Response Time*

Appellants direct the panel to pages 11-12 of the Request for Reconsideration filed by Appellant on May 16, 2005 for the substance of the arguments.

As stated therein, certain information is requested by the client and received back at the client. Borella fails to meet this claim limitation in that Borella does not send the requested information back to the client but sends different information instead.

The Advisory Action responds to prior arguments by referring to ICMP packets with a time-stamp. However, there is no calibrated object library containing ICMP packets on a server. Further, ICMP packets are sent and returned. Such an exchange is clearly differentiable from a client requesting a particular object having a pre-known size and properties and then receiving that object from a calibrated object library on a server.

In view of the above, Appellants submit that the rejection omits various essential claimed elements that are needed for a prima facie rejection.

*Round-trip Response Time as the Time from a Client Request to a Server Through the Obtaining of the Object from the Server*

Appellants direct the panel to page 12 of the Request for Reconsideration filed by Appellant on May 16, 2005 for the substance of the arguments.

As stated therein, the claimed round-trip response time is calculated based on the time from a client request (to a server) through the obtaining of the requested object at the client (from the server). Such a request clearly does not include client based delays. However, Borella's calculations include client based delay times.

In response to prior arguments, the Advisory Action states that Borella's TCP packets round trip times are continuously recorded by a socket API and an estimate of the mean and variance of the round trip delays are used to determine network latency (referring to col. 5). Again a TCP packet transmission to and from a computer is not equivalent to a request for an object followed by the object itself. Thus, the specifically claimed elements of the round-trip response time are clearly lacking from Borella. Such a lack of disclosure in Borella provides for a clear error in the rejection and an omission of such elements that are needed for establishing a prima facie rejection.

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Applicant's undersigned attorney.

Respectfully submitted,

Paul F. Klein

By their attorneys,

GATES & COOPER LLP

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Date: July 15, 2005

By: 

Name: Jason S. Feldmar  
Reg. No.: 39,187